

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

HOUSTON JUSTICE, et al.,

Plaintiffs,

v.

GREGORY WAYNE ABBOTT, et al.,

Defendants.

MI FAMILIA VOTA, et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

5:21-cv-0844-XR
(Consolidated Cases)

**HOUSTON JUSTICE AND MI FAMILIA VOTA PLAINTIFFS' MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs Houston Justice, Houston Area Urban League, Delta Sigma Theta Sorority, Inc., The Arc of Texas, Jeffrey Lamar Clemmons, Mi Familia Vota, Marla López, Marlon López, and Paul Rutledge (collectively, "Plaintiffs") file this Motion for Leave to File a Second Amended Complaint (the "Motion") in this matter pursuant to Federal Rule of Civil Procedure 15(a)(2) and respectfully request the Court grant this Motion for the following reasons:

The proposed Second Amended Complaint, attached hereto as "Exhibit A," makes changes in light of the recent decision by the Texas Court of Criminal Appeals in *State v. Stephens*, No. PD-1032-20, 2021 WL 5917198 (Tex. Crim. App. Dec. 15, 2021).¹ The Second Amended Complaint names the District Attorneys of Bexar County, Harris County, and Travis County (Joe

¹ Plaintiffs' First Amended Complaint was filed December 1, 2021 [ECF 139], prior to the *Stephens* decision.

D. Gonzales, Kim K. Ogg, and José Garza, respectively) as defendants, and more fully sets forth specific factual allegations relating to the authority of Defendant Warren “Ken” Paxton, Attorney General of Texas to enforce the Texas Election Code. In addition, the Second Amended Complaint clarifies which provisions of SB 1 Plaintiffs challenge under their Americans with Disabilities Act and Rehabilitation Act claims relating to voter identification requirements of early voting ballot applications.

Plaintiffs do not believe their proposed Second Amended Complaint makes substantive changes that will have any effect on the arguments made by the State Defendants in their Motion to Dismiss filed on January 7, 2022 [ECF 183], and intend to timely respond to that motion. Accordingly, Plaintiffs do not believe granting leave to amend the complaint will delay the resolution of the State Defendants’ motion. As directed by the Court during the January 11, 2022 conference, Plaintiffs have provided State Defendants with a redlined version of the Second Amended Complaint concurrent with the filing of this Motion.

Nor is amendment of the complaint futile. District Attorneys Gonzales, Ogg, and Garza have the authority “to prosecute the pleas of the state in criminal cases.” *Stephens*, No. PD-1032-20, 2021 WL 5917198, at *4 (quoting *Meshell v. State*, 739 S.W.2d 246, 254 (Tex. Crim. App. 1987)). Thus, they are proper defendants to Plaintiffs’ claims seeking an injunction against prosecution for violations of provisions of SB 1.

Finally, this Motion is timely, as it is filed within the time allowed for filing a motion seeking leave to amend pleadings and join parties in this case pursuant to the Court’s scheduling order. ECF 125.

Plaintiffs have conferred with counsel for all Defendants regarding this Motion. The State Defendants advised that they cannot consent to the Plaintiffs’ amended complaints without seeing

the proposed amendments or receiving a detailed description. Defendant Isabel Longoria is unopposed to the motion, and Defendant Callanen did not provide a position.

This Motion is not brought for purposes of delay, but so that justice may be done. Thus, Plaintiffs request that the Court enter their Second Amended Complaint, Exhibit A, in this case, or in the alternative, grant this Motion so that Plaintiffs may file their Second Amended Complaint.

DATED: January 14, 2022

Respectfully submitted,

REED SMITH LLP, NAACP LEGAL DEFENSE &
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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to all counsel of record.

/s/ Jennifer A. Holmes

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CERTIFICATE OF CONFERENCE

I hereby certify that on January 6 through January 10, 2022, counsel for consolidated plaintiffs conferred with counsel for the State Defendants, and on January 14, 2022, counsel for Plaintiffs conferred with counsel for Defendants Longoria and Callanen. State Defendants advised that they cannot consent to the motion at this time without further detail. Defendant Longoria is unopposed, and Defendant Callanen did not provide a position.

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